IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 661 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMVILAS @ RAJU BALESHWAR SHUKLA

Versus

STATE OF GUJARAT

Appearance:

MS SADHANA SAGAR for Appellant

THROUGH JAIL for Appellant

MR PRADIP D BHATE APP for Respondent

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/11/2004

ORAL JUDGEMENT

1. This Appeal is preferred against a judgment and order dated 17th of April, 2000, delivered by the learned

Sessions Judge, Valsad at Navsari, in Sessions Case No. 85 of 1998, whereby present appellant Ramvilas @ Raju Baleshwar Shukla, aged 32, original accused No.1 in Sessions Case No. 85 of 1998, came to be convicted for the offence punishable under Section 397 of the Indian Penal Code, and was sentenced to undergo 7 years rigorous imprisonment and to pay fine of Rs. 5,000/- in default to undergo simple imprisonment of 2 years.

2. Learned Advocate Ms. Sadhana Sagar for the appellant and learned APP Mr. Pradip D.Bhate for the respondent State were heard in respect of the Appeal.

3. Learned Advocate for the appellant Ms. Sagar did not press the Appeal on merit and restricted her contention to the reduction of sentence awarded to the appellant. Learned Advocate Ms. Sagar contended that including remission earned by the appellant, he has already undergone imprisonment of 7 years and 8 months as on October, 2004. Therefore, it is prayed that reducing the quantum of sentence awarded by the Trial Judge in default of fine imposed upon the appellant, would serve the purpose of justice.

4. Learned APP Mr. Bhate places on record jail remarks dated 20th of October, 2004 in respect of the appellant.

5. Jail remark of the appellant indicates that including remission which he earned of one year and 26 days, the appellant has already undergone imprisonment of 7 years 9 months and some days. Meaning thereby that computing the period of remission earned by the appellant he has already undergone substantive sentence of imprisonment of 7 years awarded to him by learned Trial Judge. It is pertinent to note that on an offence being established under Section 397 of the Indian Penal Code, the Court is not empowered to inflict punishment less than 7 years. Anyhow, in this case, that statutory minimum punishment was awarded by learned Trial Judge to the appellant and he has, as aforesaid, undergone including remission, the imprisonment of 7 years. He has in all undergone 7 years and 9 months imprisonment as indicated by jail remarks. Meaning thereby that after serving the substantive sentence of 7 years awarded to the appellant, he is now undergoing imprisonment for default for not paying fine of Rs. 5,000/-. Thus, in this case, reduction is urged only in the default part of imprisonment awarded to the appellant for not paying fine.

6. Having heard learned counsels for the parties, the request made by the learned Advocate for the appellant appears to be reasonable and acceptable in above view of the matter that the appellant has already undergone imprisonment of 7 years and the imprisonment awarded of two years as default in lieu of fine of Rs. 5,000/- is required to be reduced to the extent the appellant has already undergone which comes to about 8 months and some days. Resultant effect would be while maintaining conviction and while maintaining the sentence of imprisonment of 7 years substantially awarded by the learned Trial Judge, the quantum of sentence awarded to the appellant in lieu of fine of Rs, 5,000/- imposed upon the appellant is reduced to the extent of undergone which comes to about 9 months and some days.

7. In the result, following order is passed :

" Appeal is partly allowed. While maintaining the conviction awarded to the appellant and while maintaining the sentence of imprisonment of 7 years awarded to the appellant only the quantum of sentence awarded to the appellant by learned Trial Judge in default in lieu of fine of Rs.5,000/-, is reduced to the extent of undergone which comes to about 9 months and some days instead of 2 years as awarded by learned Trial Judge. The rest of the Appeal of the appellant, except interference in quantum of sentence awarded in default of paying fine, shall stand dismissed.

The appellant is directed to set at liberty forthwith if he is not required to detain in jail for any other purpose. DS permitted on 3rd of November, 2004."

(J.R. Vora, J.)

p.n.nair